

## INVESTMENT MANAGEMENT AND CUSTODY AGREEMENT

This Investment Management and Custody Agreement (the "**Agreement**") is made as of the 26th day of June, 2000 between Kenneth L. & Linda P. Lay ("**Client**") and Trust Company of the West ("**Manager**"), a California corporation.

In consideration of the mutual agreements herein contained, Client and Manager agree as follows:

1. **Actions of Client**

Client hereby appoints Manager as Investment Manager and Custodian of the assets described in Schedule A attached hereto, together with any additions or withdrawals made therefrom by Client and the income or proceeds from the investment of such assets (the "**Account**").

2. **Agreement to Provide Investment Management and Custodial Services**

Manager hereby agrees to provide Client with investment management and custodial services with respect to the securities and other assets held from time to time in the Account.

3. **Authority and Discretion of Investment Manager**

- (a) Except as otherwise provided herein, Client hereby authorizes Manager at any time and from time to time during the term of this Agreement without prior consultation with or direction of Client to issue to brokers instructions to purchase, sell, and otherwise trade in and deal with, any equity security (including non-dividend bearing securities and convertible securities), long term and short term debt securities, commercial paper or other securities including any common or commingled trust funds, limited partnerships or other commingled funds now or hereafter established by Manager or any of its affiliates, all in conformity with the provisions of the instruments establishing such fund or funds and all amendments thereto, for the account and risk of, and in the name of the Client in accordance with the Investment Strategy Summary specified in Schedule B hereto, which may be amended from time to time. The assets and funds in the Account shall be invested and reinvested in securities of the type which Manager, based upon its reasonable commercial judgment, believes to be in Client's best interests. However, Manager will be bound by any investment restrictions or investment objectives, which Client may furnish, in writing.

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- (b) Manager shall effect all purchases and sales of securities in a manner consistent with the principles of best execution, taking into account net price (including commissions), execution capability and other services which the broker may provide. In this regard, Manager may effect transactions which cause the Client to pay a commission in excess of a commission which another broker would have charged, provided, however, that Manager shall have first determined that such commission is reasonable in relation to the value of the brokerage, research, performance measurement service and other services performed by that broker.
- (c) In making investment decisions, Manager will only take into account the assets it manages in the Account and not other assets owned by Client but not managed by Manager. Manager, in its discretion, may keep such portion of assets managed for the Account in cash or in cash equivalents as Manager may from time to time deem to be in the best interests of the Client. -
- (d) Except as otherwise provided in this Agreement, Manager shall have full discretionary authority (i) to determine which securities are to be bought or sold, (ii) to determine the manner in which securities are to be bought or sold, and (iii) to execute for the account of the Client such transactions as Manager deems necessary or desirable without the necessity of first obtaining the consent of Client before such transactions are effected.
- (e) Client hereby authorizes Manager, at any time and from time to time, during the term hereof to deliver securities sold, exchanged or otherwise disposed of from the Account, upon receipt of payment for such securities, and to pay cash for such securities received upon acquisition for the Account; provided, however, that this authorization shall not be deemed or construed to include authority to deliver or pay securities or cash to Manager for its own account or for its benefit, except as provided in sub-paragraph (a) of Paragraph 4 hereof.
- (f) Client agrees to furnish such authorizations as brokers or Manager may from time to time request to implement the provisions of sub-paragraph (a) of this Paragraph 3.
- (g) Client hereby authorizes Manager, in Manager's sole discretion, to vote, consent, waive, ratify or take other actions with respect to proxies, exchange offers, tender offers, restructurings, amendments to indentures or other agreements, or other proposed transactions relating to the assets of the Account.

- (h) Manager is authorized to comply with any written or oral instructions from Client or from Client's representative.
- (i) Manager shall not be liable for any action taken, omitted or suffered to be taken by it in its reasonable judgement, in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Agreement, or in accordance with (or in the absence of) specific directions or instructions from the Client or Client's representative; provided, however, that such acts or omissions shall not have resulted from the Manager's wilful misconduct, bad faith or gross negligence in its actions under this Agreement or breach of its duties or of its obligations hereunder.
- (j) Manager and its affiliates frequently (though not always) execute securities transactions on behalf of a number of accounts at the same time, generally referred to as "block trades." When executing block trades, securities are allocated among accounts using procedures that Manager considers fair and equitable.

#### 4. Fees

- (a) Manager's annual fee shall be computed on the basis of Schedule C hereto and shall be paid quarterly on the net asset value of the assets managed. The quarterly fee calculation shall be based on the average of the beginning and ending market value for that quarter and shall be payable by Client within 30 days after receipt of a statement from Manager setting forth the calculation of such fee. Substantial additions to or withdrawals from the Account by the Client may be pro-rated on an equitable basis for the period the assets involved were under management. To the extent that such fee is not paid by the Client, it shall be payable from the assets in the Account.
- (b) In the event that a fee period under this Agreement is less than one full quarter, then the fee for the period shall be the product obtained by multiplying a full quarterly fee by a fraction, the numerator of which shall be the number of days this Agreement is in effect prior to the end of the calendar quarter and the denominator of which shall be 90.
- (c) For the purpose of this Paragraph 4, assets shall be valued as of the close of business on the day of determination in such manner as will, in the judgment of Manager, best and most accurately reflect their fair market value.

(d) Fees shall be sent to the following address:

Trust Company of the West  
865 South Figueroa Street, Suite 1800  
Los Angeles, California 90017  
Attention: Controller-Corporate Accounting

5. Other Clients of Investment Manager

It is understood that Manager and its affiliates perform investment advisory and management services for various clients. Client agrees that Manager may give advice and take action in the performance of its duties with respect to any of its other clients which may differ from the advice given or the timing or nature of action taken with respect to the Account. Nothing in this Agreement shall be deemed to confer upon Manager any obligation to acquire a position in any security which Manager, its principals, affiliates, agents or employees may acquire for its or their own accounts or for the account of any other client.

6. Termination of Agreement

This Agreement may be modified by mutual agreement and may be terminated by either Client or Manager at any designated time upon 30 days' written notice to the other party hereto, which termination shall be effective on said designated date or 30 days after receipt of notice, whichever is later.

7. Non-Assignability

No assignment of this Agreement shall be made by Manager without the prior written consent of Client.

8. Notices

Any notice, instruction, request, consent, demand or other communication required or contemplated by this Agreement, other than routine transactions, shall be in writing and shall be deemed delivered or received when given, made or communicated by United States registered or certified mail, return receipt request, addressed as follows:

If to Client: Kenneth L. & Linda P. Lay  
c/o Robert Herrold  
2001 Kirby Drive, Suite 1000  
Houston, Texas 77019

If to Manager: Trust Company of the West  
865 South Figueroa Street, Suite 1800  
Los Angeles, California 90017  
Attention: Christopher Ainley, Douglas Foreman

provided that each party shall, by written notice, promptly inform the other party of any change of address. Copies of all non-routine correspondence shall also be sent to the General Counsel of Manager at the above address.

9. Duties as Custodian

Manager shall assume custody of all securities in the Account and will use its best efforts to collect income and principal as it becomes due, crediting it to the Account. Manager shall follow the directions of the Client as to the disposition of income. Securities may be held in the name of a nominee. Manager shall be responsible for settlement of trades, redemption of matured securities, and handling of exchanges, calls, and subscription rights.

10. Representations

Client and Manager each represents to the other that it is duly authorized and fully empowered to execute, deliver and perform this Agreement.

Client represents that employment of Manager, including the right to make decisions with respect to the voting of proxies, is authorized by, has been accomplished in accordance with, and does not violate, the documents governing the Account.

Client represents that the assets of the Account do not constitute assets of (a) an employee benefit plan (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974 ("**ERISA**")), whether or not subject to Title I of ERISA, (b) a plan described in Section 4975(e)(1) of the Internal Revenue Code, or (c) an entity whose underlying assets are assets of a plan described in (a) or (b) by reason of such plan's investment in the entity.

Client represents and warrants that Client is not relying on funds managed hereunder to meet the Client's liquidity needs, including needs for cash obligations.

11. Sub-Advisers

Manager may appoint affiliated Investment Managers (each an "Affiliate") to perform, on Manager's behalf and for such period as Manager shall determine, any or all of the services required to be performed by Manager hereunder. No additional investment management fee shall be charged for the services of such Affiliate.

12. Governing Law; Successor Bound

- (a) This Agreement is made under, and shall be governed by and construed in accordance with, the laws of the State of California.
- (b) Subject to all terms and provisions hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

13. Severability

Each provision of this Agreement is intended to be severable from the others so that if any provision or term hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remaining provisions and terms hereof.

14. Arbitration

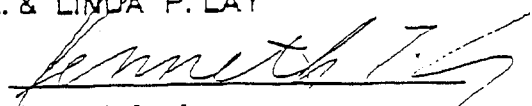
Any dispute relating to this Agreement which cannot be amicably resolved between the parties shall be resolved by binding arbitration conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association then prevailing, and the decision of the arbitrators shall be final and binding on all of the parties. The costs of the arbitration (other than fees and expenses of counsel, which shall be the responsibility of the parties retaining such counsel) shall be shared equally by the parties.

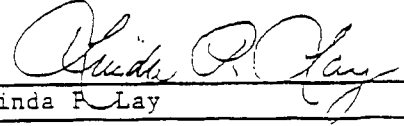
15. Entire Agreement

This Agreement, including the attached schedules, constitutes the sole and entire agreement of the parties hereto. Any written or oral agreements, statements, promises, negotiations or representations not expressly set forth in this Agreement are of no force and effect. This Agreement can be amended only by a written document signed by the parties hereto.

IN WITNESS WHEREOF, Client and Manager have caused this Agreement to be executed by their proper signatures as of the day and year first written above.

KENNETH L. & LINDA P. LAY

BY:   
NAME: Kenneth L. Lay  
TITLE: Owner

BY:   
NAME: Linda P. Lay  
TITLE: Owner

TRUST COMPANY OF THE WEST

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

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SCHEDULE A

ASSETS

\$3,000,000

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## SCHEDULE B

### INVESTMENT STRATEGY SUMMARY

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#### TCW MID-CAP EQUITY STRATEGY SUMMARY

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#### INVESTMENT OBJECTIVES

The Account seeks long term capital appreciation through investment principally in publicly-traded equity securities of medium capitalization companies, including common and preferred stocks and securities convertible into common and preferred stocks. As conditions warrant, the Account may also invest in fixed income securities, warrants and foreign securities. Performance will be measured over a full market cycle. No assurance can be given that this investment objective will be achieved.

#### INVESTMENT PRACTICES

The Account purchases securities of profitable, growing companies where the Manager believes their business prospects are not properly estimated by consensus research. When our forecasts are well above consensus expectations and prove correct, the stock usually appreciates in value. The Manager believes strongly in the value of bottom-up fundamental research and the Account is designed to capitalize on this expertise.

Quantitative and qualitative criteria are employed to screen the mid-cap universe and provide a starting point for thorough fundamental analysis of individual companies. This screening provides a list of potential purchase candidates which are then subjected to fundamental analysis. Research is accomplished through company visits with senior management, attendance at industry conferences, and cross checks with competitors/suppliers. The focus of the research effort is to comprehend fully the key factors which influence a company's competitive advantage and to build a proprietary financial model. If the Manager's forecasts are above published consensus forecasts and the security is also attractively valued, it may be included in the portfolio. It is fairly common in the mid-cap universe for the Manager to have financial forecasts which are very different from those of the few outside analysts who cover the individual companies.

Portfolio holdings generally meet at least some of the following factors:

- A demonstrated record of consistent earnings growth or the potential to grow earnings.
- An ability to earn an attractive return on equity.
- A price/earnings ratio which is less than the Manager's internally estimated three-year earnings growth rate.

- A large and growing market share.
- A strong balance sheet.
- Significant ownership interest by management and a strong management team.

Additionally, qualitative criteria such as a large and growing market share, strong balance sheet, high inside ownership, and a strong management team will be given close scrutiny in the selection of companies to include in the portfolio.

A typical Account will generally contain 40 to 60 issues. The Manager believes it is important to concentrate the Account on those issues where we have a unique fundamental insight and a proprietary earnings outlook above the consensus.

The Account is not a market timing product. We do not believe most investors are capable of executing a timing strategy successfully and we are no exception. Therefore, cash will be primarily a residual, and there will be no attempt to time the market. When there are attractively valued medium-sized issues with strong fundamentals available for purchase, the Manager will invest regardless of the market outlook.

\* \* \*

Compliance with any investment guidelines, limitations or restrictions applicable to the Account shall be determined at the time of purchase (based on the most recent valuation utilized by the Manager) and will not be affected by events subsequent to such purchase, including, without limitation, withdrawals, changes in characterization, value or rating of any specific portfolio securities or economic conditions or events generally affecting any securities of the type held by the Account; such compliance will also be computed based on the full amount to be funded by the Client, whether or not all such amounts have been received by the Manager.

## RISK FACTORS

An investment in the Account involves various risks, including the risk that an investor can lose capital. While the Manager strives to attain the investment objective of the Account through its research and portfolio management skills, there is no guarantee of successful performance, that the objective can be reached or that a positive return can be achieved. In addition to the information set forth elsewhere herein, the following factors should be considered:

### **Main Risks**

The Account will hold primarily stocks, which may go up or down in value, sometimes rapidly and unpredictably. Although stocks offer the potential for greater long-term growth than most fixed income securities, stocks generally have higher short-term volatility. In addition, the Account may hold convertible debt securities. Many convertible debt securities are rated below investment grade and are considered speculative by rating agencies as to repayment of principal and interest.

The primary risks affecting the Account are "price volatility" and "liquidity risk." **Price volatility** refers to the possibility that the value of the Account will change as the prices of its investments go up or down. The Account may be subject to greater price volatility than accounts that invest in the securities of larger companies. **Liquidity risk** refers to the possibility that the Account may lose money or be prevented from earning capital gains if it cannot sell securities at the time and price that is most beneficial to the Account. Because the securities of medium-sized companies may be less liquid than the securities of large-sized companies, the Account may be susceptible to liquidity risk more than accounts that invest in the securities of large-sized companies. In addition, the Account may be subject to liquidity risk because it may invest in debt instruments rated below investment grade.

Various market risks can affect the price or liquidity of an issuer's securities. Adverse events occurring with respect to an issuer's performance or financial position can depress the value of the issuer's securities. The liquidity in a market for a particular security will affect its value and may be affected by factors relating to the issuer, as well as the depth of the market for that security. Other market risks that can affect value include a market's current attitudes about types of securities, market reactions to political or economic events, and tax and regulatory effects (including lack of adequate regulations for a market or particular type of instrument). Market restrictions on trading volume can also affect price and liquidity.

Prices of many securities tend to be more volatile in the short-term. Therefore, an account that trades frequently or has redemption in the short-term is more likely to incur loss than an account that holds investments for the longer term. The fewer the number of issuers in which the Account invests, the greater the potential volatility of its portfolio.

### **Foreign Securities**

Investment in foreign securities involves special risks in addition to the usual risks inherent in domestic investments. These include: political or economic instability; the unpredictability of international trade patterns; the possibility of foreign governmental actions such as expropriation, nationalization or confiscatory taxation; the imposition or modification of foreign currency or foreign investment controls; the imposition of withholding taxes on dividends, interest and gains; price volatility; and fluctuations in currency exchange rates.

### **Fixed Income Securities**

Fixed income securities are subject to various risks. The two primary (but not exclusive) risks affecting fixed income instruments are "credit risks" and "interest rate risk." These risks can affect a security's price volatility to varying degrees, depending upon the nature of the instrument. In addition, the depth and liquidity of the market for an individual or class of fixed income security can also affect its price and, hence, the market value of the Account.

SCHEDULE C  
FEE SCHEDULE

Management fees:  
For Mid-Cap Growth portfolio:

1.00% per annum

Custodian fees:  
On all assets .10% per annum

Minimum account size: \$3 million